

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 547 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARESHKUMAR VALJIBHAI TALA

Versus

PRAFULLCHANDRA CHHOTALAL

Appearance:

MR DM THAKKAR for MR PM THAKKAR for Petitioner

MR PV HATHI for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/02/99

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's suspension order dated 1st January 1991 passed by the Chairman of Kalavad Nagar Panchayat.

2. The petitioner was working as Secretary to the Panchayat. For allegations of a criminal case under Section 409 IPC for taking away the pipelines of the Panchayat and for the pending inquiry, the petitioner was initially placed under suspension on 24th November 1988. It is given out that in the criminal case, the petitioner was acquitted on 16th June 1990 and thereupon he sought his reinstatement from the suspension, but the Chairman

passed an order on 1st January 1991 in context of the earlier suspension order dated 24th November 1988 and the letter dated 26th December 1990 of District Development Officer, Jamnagar, as the acquittal order dated 16.6.1990 had been appealed against and, therefore, the petitioner will continue under suspension. Against this order dated 1.1.1991 by which his suspension itself was continued, the petitioner preferred the present Special Civil Application in which, while issuing notice on 29th January 1991, the suspension was suspended. The Rule was issued on 10th July 1991 and thereafter the ad-interim relief was directed to continue till the disposal of the petition.

3. However, during the pendency of this Special Civil Application, the petitioner was again placed under suspension for different set of charges at the instance of the Anti Corruption Bureau as given out by Mr.P.V.Hathi, on 11th October 1993. Against this suspension order dated 11th October 1993, the petitioner preferred a revision application before the Development Commissioner, who did not grant stay against the suspension order. The petitioner, therefore, during the pendency of the revision application, before the Development Commissioner, preferred a Special Civil Application No. 2796 of 1994 before this Court and this time, an order was passed by this Court on 17th December 1994 that the petitioner shall not be suspended for a period upto the decision of the revision before the Development Commissioner and for a further period of 15 days from the decision of the revision application. It was further ordered that the Development Commissioner shall hear the petitioner before deciding the revision application and it will be open to the petitioner to appear before the Development Commissioner and make all his submissions including the submission about the conversion of the Nagar Panchayat into a Municipality and consequences of such conversion and further that, he will also be entitled to make all submissions which arise from the contentions taken in the Special Civil Application No. 2796 of 1994 and in case the decision of the Development Commissioner is against the petitioner, it will be open to the petitioner to follow appropriate remedy including the filing of the petition before this Court. The observations with regard to the conversion of Nagarpalika into Municipality and the consequences of such conversion was made because the Panchayat was converted to Municipality on 15th April 1994. However, it is given out by Mr.Hathi that the petitioner did not pursue the revision application before the Development Commissioner and this revision application was withdrawn

by the petitioner himself. Thereafter the Municipality also passed a suspension order dated 1.6.1995 against the petitioner and against this suspension order dated 1.6.1995, the petitioner preferred another Special Civil Application No. 4804 of 1995 which was also dismissed in default, on 25th September 1995, which was sought to be restored and, therefore, Misc. Application No.1414 of 1996 was filed, but the application for restoration was also rejected on 22nd March 1996. It is given out by Mr.Hathi that thereafter even against the inquiry proceedings, the petitioner preferred a Special Civil Application No. 4791 of 1997 and in this Special Civil Application, in the first instance, the Court while issuing the notice on 4th July 1997, passed an order directing that if the petitioner furnishes his explanation to the show cause notice dated 17th May 1997, the same shall be considered. Later on this Special Civil Application No.4791 of 1997 was also dismissed on 10th November 1997 for non prosecution and the notice was discharged.

4. The narration of the facts as above make it clear that more than one suspension orders have been passed against the petitioner after the suspension order dated 1.1.1991 which the subject matter of challenge in this petition and therefore, this Special Civil Application has virtually become infructuous because, even if the facts stated by Mr.Hathi that the appeals/revision against acquittal have been dismissed and the acquittal has attained finality, the fact remains that the petitioner never suffered the impugned suspension order dated 1.1.1991 on the strength of the interim order passed by this Court on 29th January 1991 and he continued in service notwithstanding the suspension order dated 1.1.1991 and at least till the subsequent order was passed. In this view of the matter, the submission of Mr.Hathi that the Special Civil Application has become infructuous has not been contested and rightly so.

5. The Special Civil Application is, therefore, dismissed accordingly and the Rule is hereby discharged. The interim order automatically stands vacated. No order as to costs.

sreeram.